

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

HERSHEL COLE,

Plaintiff,

VS.

No. 06-2178-M1/P

MARK LUTTRELL, et al.,

Defendants.

ORDER DENYING LEAVE TO PROCEED IN FORMA PAUPERIS
ORDER DIRECTING PLAINTIFF TO PAY THE \$250 CIVIL FILING FEE
AND
ORDER DIRECTING PLAINTIFF TO FILE EEOC CHARGE

Plaintiff Hershel Cole filed a pro se complaint on the form used for commencing actions pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., on March 23, 2006, along with a motion seeking leave to proceed in forma pauperis.

Federal law provides that the "clerk of each district court shall require the parties instituting any civil action, suit or proceeding in such court, whether by original process, removal or otherwise, to pay a filing fee of" \$250. 28 U.S.C. § 1914(a).¹ To ensure access to the courts, however, 28 U.S.C. § 1915(a) permits an indigent plaintiff to avoid payment of filing fees by filing an in forma pauperis affidavit. Under that section, the Court must conduct a satisfactory inquiry into the plaintiff's

¹ Because this complaint was filed prior to April 9, 2006, the new \$350 civil filing fee is inapplicable.

ability to pay the filing fee and prosecute the lawsuit. A plaintiff seeking in forma pauperis standing must respond fully to the questions on the Court's in forma pauperis form and execute the affidavit in compliance with the certification requirements contained in 28 U.S.C. § 1746. See, e.g., Reynolds v. Federal Bur. of Prisons, 30 Fed. Appx. 574 (6th Cir. Mar. 11, 2002); Broque v. Fort Knox Fed. Credit Union, No. 86-1896, 1997 WL 242043 (6th Cir. May 8, 1997).

The plaintiff's motion to proceed in forma pauperis does not satisfy his burden of demonstrating that he is indigent and unable to pay the filing fee or to give security therefor. In particular, the affidavit indicates that the plaintiff is gainfully employed, with an income that exceeds his monthly expenses. Accordingly, the motion to proceed in forma pauperis is DENIED. The plaintiff is ORDERED, within thirty (30) days of the date of entry of this order, to pay the \$250 civil filing fee.

Plaintiff is also ORDERED, within thirty (30) days of the date of entry of this order, to file copies of the charge of discrimination he filed with the Equal Employment Opportunity Commission and the right to sue letter.

Failure to timely comply with any requirement of this order will result in dismissal of this action, pursuant to Fed. R. Civ. P. 41(b), for failure to prosecute.

IT IS SO ORDERED this 24th day of April, 2006.

/s/ Jon P. McCalla
JON PHIPPS McCALLA
UNITED STATES DISTRICT JUDGE